MONTANA LEGISLATIVE HISTORY

Chapter 274 1979

Bill H 224 S _____ Original bill & history ____C

H. Committee on Judiciary			S. Committee on Judiciary		
Hearing Date(s)	Jan 22	✓C	Hearing Date(s)	Feb 28	✓C
	_____	____C		March	✓C
	_____	____C		_____	____C
	_____	____C		_____	____C
Date Out	Jan 22	✓C		March	✓C

Did this bill originate in an interim committee? ____Yes ____No

Committee _____ Report _____

HOUSE BILL NO. 224

INTRODUCED BY Conroy

A BILL FOR AN ACT ENTITLED: "AN ACT TO AMEND SECTION 45-5-304, MCA, TO PROVIDE THAT A PERSON DOES NOT COMMIT THE OFFENSE OF CUSTODIAL INTERFERENCE IF HE VOLUNTARILY RETURNS AN INDIVIDUAL TAKEN, ENTICED, OR WITHHELD FROM LAWFUL CUSTODY TO LAWFUL CUSTODY PRIOR TO ARREST."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 45-5-304, MCA, is amended to read:

"45-5-304. Custodial interference. (1) A person commits the offense of custodial interference if, knowing that he has no legal right to do so, he takes, entices, or withholds from lawful custody any child, incompetent person, or other person entrusted by authority of law to the custody of another person or institution.

(2) A person convicted of the offense of custodial interference shall be imprisoned in the state prison for any term not to exceed 10 years.

(3) A person does not commit an offense under this section if he voluntarily returns such person to lawful custody prior to ~~trial~~ arrest."

-End-

INTRODUCED BILL
HB 224

HOUSE OF REPRESENTATIVES
JUDICIARY COMMITTEE
January 22, 1979

The regular meeting of the House Judiciary Committee was called to order by Chairman Scully in Room 436 of the Capitol Building at 8 a.m. on Monday, January 22, 1979. All members were present with the exception of Representatives Anderson, Daily, Holmes, and Pavlovich, excused and Representative Uhde, absent.

Bills scheduled for hearing were: House Bills 223, 224 and 225.

HOUSE BILL NO. 223: Representative Conroy, as sponsor of the bill said that this bill came about as a result of the Clyde Rector case in Eureka. It would help provide law enforcement in that type of situation. It would allow law enforcement personnel to control telephone communications to and from a person holding hostages.

TOM HONZEL: County Attorney Association. The problem came to our attention during the case in Eureka. I am sure all of you are aware of the legal proceedings that followed that case. That legal battle continued for a long time. This bill does not address the problem of getting the tape, but they would be capable of keeping the lines of communicati open.

Representative Uhde came in.

Mr. Honzel continued, time is often critical. It is important that the person be able to talk to someone quickly if he should have to do so. About the bill, I find that there is a problem with the language. I understand that some of the telephone companies do not have any type of security. He offered an amendment on page 3, line 14.

Amendments will be prepared as previousl designated, and presented to the committee.

JIM HUGHES: Telephone Company official. We don't have any problem with this once we have tuned up for logistics purposes. We are concerned that we might be held liable without some type of security.

There was some further discussion on the amendment and with no questions and no further discussion the hearing closed on House Bill No. 223.

HOUSE BILL NO. 224: Representative Conroy said this is a simple line amendment. He explained the purpose of the bill. A person does not commit an offense under

this section if he voluntarily returns such person to lawful custody prior to arrest.

TOM HONZEL: County Attorneys Association. I have a very important amendment, in changing one word, trial to arrest. A custody situation is very different from a kidnapping situation. Under the old criminal code we would have to handle the situation like kidnapping. In custody cases one parent is awarded the child by the court and the other parent might take the child from custody and refuse to return them. This can be handled with a contempt of court. Further they should provide some kind of a defense and the one they opted to, that is if the parent returns the child. You cause problems for other states because of the extradition. He gave examples of cases he had handled.

There was some discussion about the Deaconess Home. By changing the wording of this we hope to solve some of these problems.

Representative Keedy asked about subsection 3 and divorce proceedings. Would the County Attorneys Association object to elimination of subsection 3.

Representative Kemmis. The purpose of this defense is because the office felt that the real need here was to get the person back where they belong rather than prosecute.

Mr. HONZEL: That seems to be what the feeling is but we run into problems with other states.

There was no further discussion and no further questions and the hearing closed on HB 224.

HOUSE BILL NO. 225: This is a simple little cowboy bill, the trespass of livestock. It provides a penalty for knowingly permitting livestock to enter or remain on another person property.

TOM HONZEL: County Attorneys Association. We have not had this part of the criminal code since 1973. He explained this briefly and mentioned that trespass was in 45-06-201.

There was discussion about the livestock running loose. In Gallatin County this problem has been especially bad.

intent will become legislative history unless it is altered each time by the committee. (copy of all amendments attached)

SENATE BILL NO. 4: Larry Weinberg will check further another section in the bill, 71-1-211.

HOUSE BILL NO. 183: Discussion about a possible amendment for a correction that should be made. Representative Lory moved to amend (attached) and the motion carried with the vote unanimous.

Representative Kemmis moved to place the bill on the consent calendar. The motion carried with the vote unanimous.

HOUSE BILL NO. 185: Representative Eudaily moved "do pass" and the motion carried with the vote unanimous. Representative Lory moved to place the bill on the consent calendar. The motion carried with the vote unanimous.

There was general discussion by various members of the committee as to the fact that they do not like the consent calendar and that it had a tendency to slow proceedings rather than expedite them as it was intended.

Representative Day moved that the Judiciary Committee bills should come off the consent calendar if the sponsor is not there to defend the bill. The motion carried with the vote unanimous.

HOUSE BILL NO. 194: There was much discussion about the definition of affinity and consanquinity as stated in the bill. Larry Weinberg will check and bring before the committee before further action is taken.

HOUSE BILL NO. 224: Representative Conroy moved "do pass." There was discussion about subsection (3) and whether or not it should be there. The question was called and the motion passed with the vote unanimous. Representative Conroy moved that the bill be placed on the consent calendar and the vote was unanimous to do so with the exception of Representative Lory. It will not go to the consent calendar. Representative Lory withdrew his vote of "no". It will go to the consent calendar.

The meeting adjourned at 9:50 so that members could attend the joint hearing on Senate Bill #65.

John Scully, Chairman

stated that they do endorse much stronger and stringent control of this, he said that they have had people go to jail for refusing; and he stated that most of the time-cutting would not be appropriate, this would probably be done in a central office.

There were no further questions or comments, and the hearing on this bill was closed.

CONSIDERATION OF HOUSE BILL 224:

This is a bill to provide that a person does not commit the offense of custodial interference if he voluntarily returns an individual taken, enticed, or withheld from lawful custody to lawful custody prior to arrest. Representative Conroy gave an explanation of this bill.

Tom Honzel, representing the Montana Association of County Attorneys, stated that he has filed complaints in this matter at least four or five times in the last year, and he gave an example of the problems involved. He stated that there was an additional problem here in Helena because of the Deaconess Home.

There were no further proponents and no opponents.

Senator Turnage stated that the typical thing you are going to be contending with is the hysterical wife calling up when her husband is two hours late in returning the child, and he said that you do not want to prosecute a case like that. Mr. Honzel said the only time they file a complaint is if they take the child out of this jurisdiction; he said that they make them wait a couple of days before we take any action.

Senator Turnage stated that the problem is to get the kid back and he stated that the present law now allows an arrest and all you want to do is get the kid back and teach the fellow a lesson. Mr. Honzel stated that they are refusing to even arrest in the other states right now, and our governor handles most of the extraditions and he said that we can't even get the person arrested. Senator Turnage stated that even if he voluntarily returns the child, I think you are asking for problems in this bill.

There being no further questions or comments, the hearing on this bill was closed.

CONSIDERATION OF HOUSE BILL 226:

This is an act to provide that the county attorney or deputy county attorneys may not be appointed counsel for a minor in divorce or guardianship proceedings, etc. Rep. Conroy gave an explanation of this bill.

Tom Honzel, representing the Montana Assn. of County Attorneys, stated that it is the feeling of the county attorneys that we do not belong in those cases and he said that in larger cities it is taking away a lot of time for other duties that they have, and he said that this bill would just make it clear that the court is not suppose to use the county attorneys.

There were no further proponents and no opponents.

Senator Turnage moved that the bill be concurred in.

Senator Van Valkenburg stated that it seems to me to be obvious that the supreme court was trying to save some money for the taxpayers and he stated that, as he recalled, that this was not in every case, but in cases where there was really no money available to pay for counsel. Mr. Honzel said that that is what it says - in contested custody cases.

Senator Towe questioned what about cases where the county attorney is the only attorney in the area. He felt that maybe it should be made permissive instead of mandatory. Senator Turnage stated that the county attorney has no business in this and that is all there is to it. Rep. Conroy stated that most of these county attorneys have enough to do without having to fool around with these problems.

A vote was taken on the motion to be concurred in and the motion carried with Senator Van Valkenburg voting no.

DISPOSITION OF HOUSE BILL 225:

Senator Turnage moved that this bill be tabled. Senator Lensink said that it seemed to him that, with the amendment, it so changes the bill that you just might as well not put it on the books. Senator Towe stated that he had no problem with the bill if you take out that forty-eight hour notice. A vote was taken on the bill and the motion carried with Senator Brown voting no.

DISPOSITION OF HOUSE BILL 163:

Senator Towe moved that the bill be amended on page 1, line 17, by striking the new material "and the property subsequently disposed of". The motion carried unanimously.

Senator Towe moved that the bill be concurred in as amended. The motion carried unanimously.

DISPOSITION OF HOUSE BILL 224:

Senator Turnage stated that they do not know what they are getting into and that all they want is the child back, and he felt that they were asking for lots of problems. Senator Towe stated that he was afraid of it, too. Senator Lensink questioned

where does custodial interference leave off and kidnapping begin. Senator Towe stated that this has been a sticky problem and has changed over the last ten years. Senator Turnage said that the parents will often use the child as a club or a weapon to get even. Senator Brown said that they are forgetting about the problem of when a woman comes in and says that she is entitled to her child, that now her husband has gone to another state, and she feels that they will not honor her rights. He stated that, when somebody signs a custody award and they have a decree, what good is it if they can't get the kid back.

Senator Van Valkenburg stated that the arrest is too soon, that arrest is the decision of the county attorney, and he thought that arraignment would be better, and that arraignment is usually about two weeks after arrest.

Senator Turnage stated that arraignment would be better than arrest, and he suggested that they think about it overnight.

There being no further business, the meeting was adjourned at 11:20 a.m.

Everett R. Lensink

SENATOR EVERETT R. LENSINK, Chairman
Senate Judiciary Committee

Senator Turnage moved that the bill be concurred in as amended. The motion carried unanimously.

DISPOSITION OF HOUSE BILL 224:

Senator Van Valkenburg moved the bill be amended by striking "arrest" on line 23 and inserting in lieu thereof "arraignment unless such person has left the state of Montana and in such case the offense is committed unless the person is returned prior to arrest." Senator Brown stated that Tom Honzel said that arraignment wouldn't do it. The motion carried unanimously.

Senator Van Valkenburg moved that the bill be concurred in as amended. The motion carried unanimously.

DISPOSITION OF HOUSE BILL 258:

Senator Turnage moved that the bill be not concurred in. He said that thousands of deeds lie in escrow in this state; and, in every instance, there has to be an acknowledgement; a typewritten name has to appear; and it would take thousands of man hours to type these names. He said that each document with an acknowledgement has a typewritten name, and he really could not understand why the clerks want this thing.

The motion carried with Senator Galt voting no.

DISPOSITION OF HOUSE BILL 242:

Senator Brown moved that this bill be amended on page 4, line 2 by striking subsection 2-4-613;. The motion carried unanimously. He further moved that the bill be amended on page 1, line 9, after "decision" that the following language be inserted "authorizing collection of attorney's fees under certain circumstances"; and further amend on page 5, line 4, after "agency" insert "in collection of attorney's fees" and on page 6, line 5 after "record" strike all the remainder of lines 5 through 8 and on page 6, after 12 insert a new subsection (5). There was some discussion and Senator Brown withdrew all his amendments.

Senator Brown moved that the bill be amended on page 6, line 5 after "record" strike all the remaining language on lines 5 through 8; and that the bill be concurred in as amended. There was some discussion. Senator Brown then moved that the bill be amended on page 6, following line 12 by adding the following new language: "New Section. Section 5. Codification. Section 3 shall be placed in chapter 4 of title 2 of M.C.A." The motion carried.

HB 224

1. Title, line 8.
Following: "PRIOR TO"
[redacted]
Insert: "ARRAIGNMENT OR, IN CERTAIN CASES, PRIOR TO"

[redacted]

2. Page 1, line 21.
Following: "(3)"
Insert: "A person who has not left the state does not commit an offense under this section if he voluntarily returns such person to lawful custody prior to arraignment."
Following: "person"
Insert: "who has left the state"

#48

STANDING COMMITTEE REPORT

March 5 19 79

MR. President

We, your committee on Judiciary

having had under consideration House Bill No. 224

Respectfully report as follows: That House Bill No. 224,

third reading bill, be amended as follows:

1. Title, line 8.
Following: "PRIOR TO"
Insert: "ARRAIGNMENT OR, IN CERTAIN CASES, PRIOR TO"

2. Page 1, line 21.
Following: "(3)"
Insert: "A person who has not left the state does not commit an offense under this section if he voluntarily returns such person to lawful custody prior to arraignment."
Following: "person"
Insert: "who has left the state"

And, as so amended,
BE CONCURRED IN

DO PASS

Everett R. Lensink, Chairman.

STATE PUB. CO.
Helena, Mont.

HOUSE BILL NO. 224

INTRODUCED BY CONROY

A BILL FOR AN ACT ENTITLED: "AN ACT TO AMEND SECTION 45-5-304, MCA, TO PROVIDE THAT A PERSON DOES NOT COMMIT THE OFFENSE OF CUSTODIAL INTERFERENCE IF HE VOLUNTARILY RETURNS AN INDIVIDUAL TAKEN, ENTICED, OR WITHHELD FROM LAWFUL CUSTODY TO LAWFUL CUSTODY PRIOR TO ARRAIGNMENT OR, IN CERTAIN CASES, PRIOR TO ARREST."

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(2) A person convicted of the offense of custodial interference shall be imprisoned in the state prison for any term not to exceed 10 years.

(3) A PERSON WHO HAS NOT LEFT THE STATE DOES NOT COMMIT AN OFFENSE UNDER THIS SECTION IF HE VOLUNTARILY RETURNS SUCH PERSON TO LAWFUL CUSTODY PRIOR TO ARRAIGNMENT. A person WHO HAS LEFT THE STATE does not commit an offense under this section if he voluntarily returns such person to lawful custody prior to ~~trial~~ arrest."

-End-